
OPINION OF THE PUBLIC ACCESS COUNSELOR

GRAYLIN PORTER,
Complainant,

v.

HARRISON COUNTY BOARD OF HEALTH,
Respondent.

Formal Complaint No.
22-FC-18

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging that the Harrison County Board of Health violated the Open Door Law.¹ County Attorney Chris Byrd and Carrie Herthel, the County Health Administrator, each filed an answer on behalf of the Board. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 7, 2022.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case involves a dispute about whether the Harrison County Board of Health provided adequate public notice of an executive session, and whether the prolonged duration of the executive session interfered with the public's ability to attend the public meeting that followed.

On February 2, 2022, the Harrison County Board of Health (HCBH) held an executive session followed by a regular public meeting. The gathering started that day at 8:00 a.m.

Five days later, Graylin Porter (Complainant), founder of Blue Dot,² filed a formal complaint alleging the HCBH violated the Open Door Law (ODL). Specifically, Porter argues the HCBH failed to provide Blue Dot notice of the executive session, failed to provide notice of the time or location of the public meeting, and effectively barred Blue Dot's representative from attending the public meeting because it started so late.³

The HCBH argues it posts annual notice of meeting times and locations online and in the local paper, as well as physically posted outside the meeting location. It argues no one was denied admittance to the regular public meeting and the time did not unduly frustrate the public.

² Blue Dot describes itself as a podcast dedicated to life in Harrison County, Indiana.

³ Porter contends that an hour after the executive session started, the HCBH informed Blue Dot's representative that it would be another 30 to 45 minutes until the executive session was over.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

Harrison County is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the Harrison County Board of Health is a governing body under the ODL. *See* Ind. Code § 5-14-1.5-2(b). As a result, unless an exception applies, all meetings of the Harrison County Board of Health must be open at all times to allow members of the public to observe and record.

1.1 ODL definitions

Under the ODL, "meeting" means "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code § 5-14-1.5-2(c).

"Official action" means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d). Notably, the ODL defines "final action" as "a vote by the governing body on any motion, proposal, resolution,

rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c). Additionally, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

2. Public notice

The Open Door Law requires a governing body to provide public notice of the date, time, and place of any meetings, executive sessions, or any rescheduled or reconvened meeting, at least 48 hours—excluding Saturdays, Sundays, and legal holidays—before the meeting. *See* Ind. Code § 5-14-1.5-5(a). Public notice for an executive session must also state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under the ODL. Ind. Code § 5-14-1.5-6.1(d).

The ODL also governs the way a governing body must provide public notice. Ind. Code § 5-14-1.5-5(b). Annual notice of regular meeting times is appropriate so long as there is no deviation from the listed information.

Here, the HCBH argues that it posts notice of dates, times, and locations for meetings on the department’s website⁴ and in the local newspaper. The HCBH also asserts that it posts the meeting agenda outside the board room.

As an initial matter, it is important to mention that the Open Door Law does not require a governing body to post public

⁴ The HCHB provided the following link: <http://www.in.gov/localhealth/harrisoncounty/health-board/board-meetings> .

notice of its meetings online or publish notice in the newspaper. These are worthwhile practices, but not required by the law as written.

On the other hand, the law does require a governing body to post public notice of all meetings and executive sessions at the public agency's principal office or at the meeting location. *See* Ind. Code § 5-14-1.5-5(b).

Based on the information provided, the HCHB did not provide public notice in accordance with the Open Door Law.

Even if the information posted on the Harrison County page of the Indiana State Department of Health's website or the information published in the local newspaper qualified as adequate notice under the ODL, a public meeting should not so unreasonably depart from its stated start time to deprive the public of its right to attend and observe. *See* Ind. Code § 5-14-1.5-5(h).

In this case, there is no dispute regarding the 8:00 a.m. start time. The public meeting did not start until close to 9:30 a.m. That is a departure of more than an hour past the stated start time. This is an unreasonable departure and contrary to the entire construct of public notice insofar as time is concerned.

This office previously acknowledged that even a departure of 15 minutes from the posted public notice is enough to violate the statute.⁵

⁵ *Opinion of the Public Access Counselor*, 02-FC-21 (2002).

Moreover, our courts have recognized the law requires:

... public notice of the “date, time, and place of any meetings,” and “whichever comes later” [referring to the conclusion of an executive session] is not a concrete “time” from the public’s perspective. ... The fact that several members of the public nonetheless attended does not alter our conclusion.

Warren v. Board of School Trustees of Springs Valley Community School Corp., 49 N.E.3d 559, 567-568 (Ind. Ct. App. 2015).

Regarding individualized public notice to *Blue Dot*, Harrison County did not present an argument as to why it was not provided. Conversely, Porter submitted emails from December 2021 showing *Blue Dot* requested individual public notice from the Harrison County Health Department as news media,⁶ which is a condition of receiving individualized public notice under the Open Door Law. *See* Ind. Code § 5-14-1.5-5(b)(2). The health department’s administrator responded promptly with a document showing the board’s meeting dates for 2022.

Presuming *Blue Dot* does qualify, if regularly scheduled meetings are noticed annually at the beginning of the year, it would only be entitled to the annual notice when those dates are posted unless a deviation from that schedule occurs. Qualifying news media are also entitled to individual

⁶ Ind. Code § 5-14-1.5-2(j): “News media” means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

public notice of executive sessions and special meetings not covered by the board's annual notice.

3. Executive sessions

Perhaps more pressing is the public notice issues regarding executive sessions. It does not appear the HCBH posted public notice of its closed-door meetings anywhere.

Under the ODL, the term "executive session" means "a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose." Ind. Code § 5-14-1.5-2(f).

Notably, executive sessions are distinguishable from regular public meetings. Executive sessions require separate public notice.

Additionally, there exists a heightened requirement for executive session notice and for good reason. While the law allows some latitude to a governing body to meet behind closed doors, the public in turn is entitled to specific notice as to why.

The Open Door Law requires public notice of executive sessions to state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). Ind. Code § 5-14-1.5-6.1(d). Subsection (b), of course, lists the specific subject matters that are authorized for an executive session.

Here, it appears that executive sessions are simply part and parcel of the regular routine of the HCBH. On the contrary, executive session should be outliers, only invoked when necessary, and noticed to the full extent of the law.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Harrison County Board of Health did not provide adequate public notice of the regular meeting, or the executive session convened on February 2, 2022.

Additionally, while not enough information was provided to make a conclusive determination, it appears as if executive sessions are being improperly held.



Luke H. Britt
Public Access Counselor

Issued: March 23, 2022